



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2015-1126]

RIN 1625-AA08

Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations for certain waters of the Chesapeake Bay. This action is necessary to provide for the safety of life on these navigable waters located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD, during a paddling event on May 14, 2016. This rulemaking will prohibit persons and vessels from being in the regulated area unless authorized by the Captain of the Port Baltimore or Coast Guard Patrol Commander.

DATES: This rule is effective from 7:30 a.m. on May 14, 2016 through 12:30 p.m. on May 15, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1126 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, e-mail Ronald.L.Houck@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 28, 2015, ABC Events, Inc. notified the Coast Guard that from 8 a.m. until noon on May 14, 2016, it will be conducting the Bay Bridge Paddle race in the Chesapeake Bay, under and between the north and south spans of the William P. Lane, Jr. (US-50/301) Memorial Bridges, located between Sandy Point, Anne Arundel County, MD and Kent Island, Queen Anne's County, MD. In response, on February 12, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD” in the Federal Register (81 FR 7481). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this paddle race. During the comment period that ended March 14, 2016, we received 2 comments. No public meeting was requested, and none was held.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1233. The COTP

Baltimore has determined that potential hazards associated with the paddle race on May 14, 2016 will be a safety concern for anyone intending to operate within certain waters of the Chesapeake Bay between Sandy Point and Kent Island, MD. The purpose of this rule is to protect event participants, spectators and transiting vessels on certain waters of the Chesapeake Bay before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received 2 comments on our NPRM published on February 12, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

One commenter, the Sailing Club of the Chesapeake, stated that the regulated area for this event would impact its planned annual sailing regatta held on the Chesapeake Bay, between a location south of the south span of the William P. Lane, Jr. (US-50/301) Memorial Bridges and a location north of the north span.

The COTP Baltimore had no prior notifications of this annual sailing regatta in previous years. The Coast Guard will only enforce the regulated area during the enforcement period. However, should the event sponsor develop a schedule that would help predict when and where gaps in the race course may exist during the event, and vessel traffic would be able to safely transit the regulated area once the Coast Guard Patrol Commander deems it safe to do so, then such actions could be permitted after authorization is obtained.

The second commenter, the Baltimore Port Alliance, stated that, as proposed, the regulated area for this event would block ship access to and from the Port of Baltimore for five hours, and that any restrictions on vessel traffic in or out of the port could result in a significant economic hardship for port stakeholders by disrupting committed schedules. Additionally, the

commenter recommended redesigning the paddle race course as to not block the main shipping channel or to change the date of the paddle race to coincide with the annual Great Chesapeake Bay Swim event a month later, so that only one blockage of the main shipping channel would occur.

The Coast Guard agrees that waterway restrictions, when necessary, should be as limited in scope and duration. For this event, enough notice has been provided for persons to schedule, coordinate and adjust their ship schedules. As it currently does with the annual Great Chesapeake Bay Swim event, the Coast Guard will work with the port stakeholders to monitor potential impacts to commercial vessel movements in the vicinity of the event area. Additionally, it is impractical to conduct the events concurrently; as the two events are of different types, each having hundreds of participants occupying the same navigable waters. Since the times for the Great Chesapeake Bay Swim event are also dependent upon tidal current predictions, the possibility exists, should both events be conducted on the same day, the waterway restrictions would last for a significantly longer period of time having a greater impact on the public and the use of the waterway.

This rule establishes special local regulations from 7:30 a.m. until 12:30 p.m. on May 14, 2016, and, if necessary due to inclement weather, from 7:30 a.m. until 12:30 p.m. on May 15, 2016. The regulated area will cover all navigable waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00'36" N., longitude 076°23'05" W. and thence eastward to the eastern shoreline at latitude 38°59'14" N., longitude 076°20'00" W., and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that

originates from the western shoreline at latitude 39°00'16" N., longitude 076°24'30" W. and thence eastward to the eastern shoreline at latitude 38°58'38.5" N., longitude 076°20'06" W. The duration of the regulated area is intended to ensure the safety of vessels and these navigable waters before, during, and after the event, currently scheduled to begin at 8 a.m. and last until noon. Except for Bay Bridge Paddle participants, no vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP Baltimore or designated Coast Guard Patrol Commander.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Chesapeake Bay for only 5 hours. Although the regulated area cuts off one portion of the Chesapeake Bay from the other, the closure is temporary, and notice has been provided well in advance to permit mariners to plan their transit. The Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine

channel 16 about the status of the regulated area. Moreover, the rule would allow vessels to seek permission to enter the regulated area, and vessel traffic would be able to safely transit the regulated area once the Coast Guard Patrol Commander deems it safe to do so.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section IV.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act

addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area lasting for 5 hours. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety

or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements,
Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

2. Add a temporary § 100.35-T05-1126 to read as follows:

§ 100.35-T05-1126 Special Local Regulation; Chesapeake Bay, between Sandy Point and Kent Island, MD.

(a) Regulated area. The following location is a regulated area: All navigable waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridges from shoreline to shoreline, bounded to the north by a line drawn parallel and 500 yards north of the north bridge span that originates from the western shoreline at latitude 39°00'36" N., longitude 076°23'05" W. and thence eastward to the eastern shoreline at latitude 38°59'14" N., longitude 076°20'00" W., and bounded to the south by a line drawn parallel and 500 yards south of the south bridge span that originates from the western shoreline at latitude 39°00'16" N., longitude 076°24'30" W. and thence eastward to the eastern shoreline at latitude 38°58'38.5" N., longitude 076°20'06" W. All coordinates reference Datum NAD 1983.

(b) Definitions. (1) Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(3) Official Patrol means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(4) Participant means all persons and vessels participating in the Bay Bridge Paddle event under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) Special local regulations. (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both. The Coast Guard Patrol Commander may terminate the event, or the operation of any support vessel participating in the event, at any time it is deemed necessary for the protection of life or property.

(2) Except for participants and vessels already at berth, mooring, or anchor, all persons and vessels within the regulated area at the time it is implemented are to depart the regulated area.

(3) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or Coast Guard Patrol Commander. Prior to the enforcement

period, to seek permission to transit the area, the Captain of the Port Baltimore can be contacted at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

During the enforcement period, to seek permission to transit the area, the Coast Guard Patrol Commander can be contacted on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) for direction.

(4) The Coast Guard may be assisted in the patrol and enforcement of the regulated area by other Federal, State, and local agencies. The Coast Guard Patrol Commander and official patrol vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) Enforcement period. This section will be enforced from 7:30 a.m. until 12:30 p.m. on May 14, 2016, and, if necessary due to inclement weather, from 7:30 a.m. until 12:30 p.m. on May 15, 2016.

Dated: March 31, 2016.

Lonnie P. Harrison, Jr.,
Captain, U.S. Coast Guard,
Captain of the Port Baltimore.

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